

Focus on Common Rule Violations

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Office of Lawyers Professional Responsibility
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Issue Spotting

- What do we do when we receive a complaint?
- What do you see as potential issues? What rules correlate with that issue?
- Review the rules (will help you ask questions once you see what people have to say)



A Complaint

- Client hired lawyer to represent against State criminal charges.
- \$12,000 flat fee. Client paid \$6,000 of it when hired the lawyer.
- Soon after, client indicted on Federal charges for same offense.
- Client discharged lawyer and requested lawyer refund the \$6,000.
- Lawyer went radio silent.



Issue Spotting - Again

- From Complaint: No response to request for refund
- From Complaint: No refund
- Also: Flat fee agreement



Rule 1.3, MRPC

- RULE 1.3: DILIGENCE
- A lawyer shall act with reasonable diligence and promptness in representing a client.
- “Reasonable” defined, Rule 1.0, MRPC,
- (i) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.



Delays

- All of the facts and circumstances matter; explain why or why not what happened was outside what is reasonable.
- Sometimes more appropriately analyzed under Rule 1.1, Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.



Rule 1.4, MRPC

RULE 1.4: COMMUNICATION

(a) A lawyer shall

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



Communication

- If communication is in issue, what section and why?
- Can be more than one section violated but treat as distinct issues when issue spotting and to analyze.



Communication

- All of the facts and circumstances matter; explain why or why not what happened was outside what is reasonable.



Rule 1.5, MRPC

- Written fee agreements are not always required—
 - Exceptions, when collecting a flat fee and wish to place in operating account before rep concludes or contingency case.
 - But lack of clarity around scope of rep can lead to Rule 1.5(b) issues or Rule 1.2(c) issues.
 - Always ask for copy of fee agreement.



Rule 1.5(b), MRPC

- If charging a flat fee and have an agreement that does not conform to Rule 1.5(b)(1), violation of Rule 1.15(c)(5) if fee is placed in operating account before services rendered.
- Fee agreements cannot describe fee as nonrefundable or earned upon receipt.
- What about if otherwise describe fee as nonrefundable?



Rule 1.5(b)(3), MRPC

- Flat fee but rep not completed? Some refund is owed because did not complete the scope of the rep no matter how much work put into. Failure to make a refund in this situation is a violation of Rule 1.5(b)(3), MRPC.
- “Whenever a client has paid a flat fee or an availability fee pursuant to Rule 1.5(b)(1) or (2) and the lawyer-client relationship is terminated before the fee is fully earned, the lawyer shall refund to the client the unearned portion of the fee. If a client disputes the amount of the fee that has been earned, the lawyer shall take reasonable and prompt action to resolve the dispute.”



Rule 1.6(a), MRPC

- (a) Except when permitted under paragraph (b), a lawyer shall not knowingly reveal information relating to the representation of a client.
- (b) A lawyer *may* reveal information relating to the representation of a client if:



Rule 1.6(b), MRPC

(2) the information is not protected by the attorney-client privilege under applicable law, the client has not requested that the information be held inviolate, and the lawyer reasonably believes the disclosure would not be embarrassing or likely detrimental to the client;

– No public records exception but.....



Rule 1.16(d), MRPC

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fees or expenses that has not been earned or incurred.



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Issue Spotting – What Rules?

- Flat fee agreement
- No response to request for refund
- No refund.



Special cases

- Rules that we rarely if ever see violated:
 - Rule 3.7, MRPC—often really Rule 1.7 issue
 - Rule 1.14, MRPC—could be Rule 1.6(a) issue



Questions on Rules

- Discuss with Chair
- Call OLPR liaison



Thank you



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